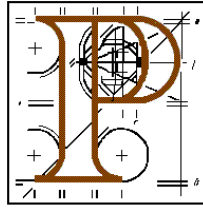


An Bord Pleanála



Inspector's Report

Regulation (EU) No. 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-european energy infrastructure

PCI 0001

Project promoter:	EirGrid PLC (Republic of Ireland)/ NIE (N. Ireland)
Issue:	Project of Common Interest (PCI) – Should an application to be lodged with An Bord Pleanala for that section of the Interconnector project falling within the Irish State be subject to the requirements of Chapter III of Regulation (EU) No. 347/2013 and whether or not that part of the project falling within the Irish State falls within the transitional provisions set out in Article 19 of the Regulation
Nature of PCI Development:	Proposed 400kV North South electricity interconnector from Woodlands substation Co Meath to a proposed substation at Turleenenan, Co Tyrone, N. Ireland. Development constitutes that part of the transmission line within the Republic to the State border). Separate applications have already been lodged by Northern Ireland Electricity (NIE) to the Northern Ireland Planning Service (NIPS) in N. Ireland for section of route within that jurisdiction
Inspector:	Philip Green

Appendices

Appendix 1 - Inspector's pre app consultation report 02. VC0054 dated 28th January 2014

Appendix 2 - Inspector's scoping report 02. VS0002

Appendix 3 - An Bord Pleanála's Notification dated 10th February 2014 to Eirgrid.

Appendix 4 - ABP Written Presentation of Argument made by Director of Planning 6th February 2014 to Commission (DG – Energy)

Appendix 5 - Note of meeting with DG - Energy and Board representatives, Brussels 11th February 2014

Appendix 6 - Email response of DG – Energy dated 17th February 2014

Appendix 7 - ABP Further Presentation of Reasoning made by Director of Planning dated 10th March 2014 to Commission

Appendix 8 - Second email response of DG – Energy dated 7th April 2014

Appendix 9 – Copies of previous Public Notice (02. VA0006) and draft Notice provided by Eirgrid pursuant to 02.VC0054 and potential SI application

Appendix 10 - Eirgrid letter of withdrawal. 02. VA0006 29th June 2010

1.0 INTRODUCTION/BACKGROUND

1.1 The Board will be aware that on the 4th December 2013 the Department of Communications, Energy and Natural Resources wrote to the Chairperson to confirm An Bord Pleanála's appointment as the Competent Authority for purposes of implementation of the permit granting and other procedures for PCI's established under Regulation (EU) 347/2013. This appointment was accepted by the Chairperson on 20 December 2013.

1.2 Since that time liaison has taken place with other relevant State agencies and bodies and work has progressed on establishing a Manual of Procedures for the permit granting process applicable to PCI's pursuant to Art.9(1) of the Regulation. The date set in the Regulation for publication of the Manual is 16th May 2014. It is intended to seek to achieve that publication date. The form and content of the Manual will be the subject of further report and presentations to the Board. The Manual itself does not form the subject matter of this report.

1.3 A related PCI matter on which the Board must however make a determination has arisen in regard to the North South Interconnector project promoted by Eirgrid. The North South interconnector is a PCI established under the first Union List of PCI's (as provided for in the Regulation) adopted by the EC on the 14th October 2013 and is described as

“2.13.1 Ireland – United Kingdom interconnection between Woodland (IE) and Turleenan (UK – Northern Ireland). A new 400kV AC single circuit (OHL) of 140km. and with a capacity of 1,500 MVA between

Turleenan 400/275kV in Northern Ireland (UK) to Woodland 400/220kV (IE) (onshore)”.

- 1.4** Eirgrid wrote to notify the Board that the North South Interconnector is a PCI and seeking ‘acknowledgement’ of the proposed development under the Regulation. The Board should note that this ‘acknowledgement’ pursuant to art 10(1)(a) of the Regulation is very significant insofar as should the Board issue such an acknowledgement then this would constitute the actual commencement of the PCI permit granting process under Chapter III of the Regulation for which there are formal timelines and procedural requirements set out. Clearly this would impose some difficulty as no Manual of Procedures for the permit granting process has yet been adopted by the Board.
- 1.5** The question arises as to whether the provisions of Chapter III would apply to the proposed North South Interconnector project. This results from the transitional provisions set out in Art. 19, the significant application and pre application history related to the project both in this jurisdiction and in Northern Ireland and having regard to the further matters set out below (see section 3.1). Should such transitional provisions be deemed to apply by the Board then the North South Interconnector project would remain a PCI but the project would not be subject to the permit granting process set out in Chapter III of the Regulation. Eirgrid would still however be subject to the requirement to apply for planning approval direct to the Board under the SI provisions of the Planning and Development Act (2000), As Amended, a process which they have already commenced.
- 1.6** On the 15th April 2014 An Bord Pleanála as competent authority under Regulation 347/2013 for PCI’s within the Irish State notified Eirgrid that the project was not considered mature enough to enter into the permit granting process for the following reason:
- “Article 19 of the Regulation relates to transitional provisions. The second paragraph of Article 19 provides that for projects of common interest in the permit granting process for which a project promoter has submitted an application file before the 16th November 2013, the provisions of Chapter III should not apply. An Bord Pleanála, as the competent authority is still considering whether or not the transitional provisions of Article 19 concerning Chapter III apply to the North-South Interconnector project”.
- 1.7** As indicated above the North South Interconnector project has a significant planning history under the Strategic Infrastructure (SI) provisions of the Planning and Development Act (2000), as Amended. It was the subject of pre application discussions (references 17. VC0010 & 02. VC0011) and a subsequent (withdrawn) planning application (reference 02. VA0006) under the SI legislation. Following that withdrawn application new pre application discussions were held

and recently completed for the project under reference 02. VC0054. In parallel a scoping report (reference 02. VS0002) was completed. By letter dated 10th February 2014 Eirgrid were advised that the proposed development would be strategic infrastructure within the meaning of the Act, that an EIS was required and that the Board were of the view that significant effects were likely on a transboundary State (Northern Ireland). Attached as Appendix 1 is the Inspectors report on pre application consultation 02. VC0054 (which sets out the history and details of the project), Appendix 2 scoping report 02. VS0002 and Appendix 3 An Bord Pleanála's Notification dated 10th February 2014 to Eirgrid.

- 1.8** The question now before the Board is therefore should an application to be lodged with An Bord Pleanála for that section of the Interconnector project falling within the Irish State be subject to the requirements of Chapter III of Regulation (EU) No. 347/2013 having regard to the transitional provisions set out in Article 19 of the Regulation?

2.0 **ARTICLE 19 OF REGULATION 347/2013**

- 2.1** Article 19 states:

“Transitional provisions

This Regulation shall not affect the granting, continuation or modification of financial assistance awarded by the Commission on the basis of calls for proposals launched under Regulation (EC) No 680/2007 of the European Parliament and of the Council of 20 June 2007 laying down general rules for the granting of Community financial aid in the field of the trans-European transport and energy networks (22) to projects listed in Annexes I and III to Decision No 1364/2006/EC or in view of the targets, based on the relevant categories of expenditure for TEN-E, as defined in Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund (23).

For projects of common interest in the permit granting process for which a project promoter has submitted an application file before 16 November 2013, the provisions of Chapter III shall not apply.” (my emphasis)

3.0 **CONSIDERATIONS**

- 3.1** The issue of the North South Interconnection project as a PCI was first raised at a late stage in the 02. VC0054 pre application consultation process. Since that time and the Board's appointment as competent authority the Board's representatives have been attempting to seek clarification on the interpretation of Article 19 and whether the

transitional provisions of the Regulation would apply to the specific circumstances of the North-South Interconnection project. In particular a request was made to DG – Energy to attempt to seek some clarity on the matter. This request and associated responses from DG – Energy took the following form:

- Written Presentation of Argument made by An Bord Pleanála Director of Planning 6th February 2014 to Commission (see Appendix 4)
- Meeting with DG – Energy and Board representatives, Brussels 11th February 2014 (see Appendix 5 for Note of meeting)
- First email response of DG – Energy dated 17th February 2014 (see Appendix 6)
- Further Presentation of Reasoning made by An Bord Pleanála Director of Planning dated 10th March 2014 to Commission (see Appendix 7)
- Second email response of DG – Energy dated 7th April 2014 (see Appendix 8)

3.2 I would draw the Board's attention to the arguments recited in the Director of Planning's written submissions and particularly to those points set out in points 1 to 10 (case that the requirements of chapter III of the Regulation may not apply) of the Director of Planning's written submission dated 10th March 2014. This (and the previous submission dated 6th February 2014) tended towards a preliminary view that the North – South Interconnection PCI project may be a transitional project and that the transitional provisions of Article 19 of the Regulation may apply.

3.3 In response to the first Written submission of the Director of Planning (see Appendix 4) and following the meeting in Brussels the DG Energy concluded that the transitional provisions of Art. 19 would not apply and that Chapter III of the Regulations would apply for the permit granting procedure for the Irish State's part of the project although this opinion was stated as "merely a technical level analysis from our services and not an interpretation binding for the European Commission. If you require an official position of the Commission on the interpretation, we would have to submit the question to the Commission Legal Service ..."

3.4 Following An Bord Pleanála's further submission dated 10th March 2014 the second response from DG – Energy was received. This was stated to be drafted in consultation with the Commission's Legal Service. This subsequent response provides some clarification by stating that "the submission of an application file to the competent authority by a project promoter before 16th November 2013 is sufficient to fulfill the condition defined in Article 19, second paragraph of the TEN-E Regulation. The acceptance of the application file by the national authority is not required for that effect under the TEN-E Regulation". The emphasis of the EC's consideration in this second

response would appear to be on the “application file”. The third paragraph in particular of that response seeks to expand on a situation where an application file might have been withdrawn (such as with the first North South interconnector application reference 02. VA0006) and whether this would render it “non submitted”. It indicates that conclusions in such instances will need to be made on a “case by case analysis”. It states that it “should be examined what a withdrawal, according to the national rules applicable at the time of the submission of the file and in the specific context of a case, means. If a withdrawal is done for the purpose of submitting a different file that will require a new examination then Article 19 will no longer be applicable. However one should assess if a withdrawal of an application file in view of adding further information to the same file is not equivalent to a mere suspension of the first application, in which case Article 19 will be applicable. Consequently the determination is always to be assessed on a case by case basis, taking into account the rationale of the transitional provisions laid down by Article 19 of the TEN – E Regulation”.

3.5 In my opinion this focus on the “application file” does not address or respond directly to all the circumstances relating to the North-South project highlighted in the Board’s written submissions and on which clarity was sought. These highlighted matters such as, for example, the North South interconnector being a single PCI project, live planning applications in Northern Ireland in respect of the project, the North South interconnector being a joint, single project, the fact that an application was lodged prior to the 16th November 2013 in the State (albeit withdrawn), the advanced stage of the case under the State’s Strategic infrastructure legislation and associated requirements under that legislation and inconsistencies in resultant administrative approaches should the project in the Irish State go through the Chapter III requirements with two live applications in the North that will go through a different procedure and with different public consultation requirements.

3.6 I consider that the Board should have regard to the DG – Energy comments on treating each case on its merits and to the rationale for decision making on whether or not the transitional provisions would apply as set out in that response. I consider the comments set out in the third paragraph should be given significant weight. On this basis and in the context of the advice from DG – Energy I can only reasonably conclude that the transitional provisions do not apply and therefore that Eirgrid and the North South interconnection project should be subject to the permit granting and public participation procedures established under Chapter III of the Regulation. In coming to this conclusion I would highlight the following:

- Following pre application consultations 17. VC0010 & 02. VC0011 the subsequent planning application (reference 02. VA0006) was formally withdrawn by Eirgrid;

- All parties to the case were formally notified in writing by the Board that the application had been withdrawn;
- The State's SI legislation does not permit for the re-opening of that 'application file' once it has been formally withdrawn;
- The effect of withdrawal of an application file is that the case is closed;
- Completely new pre application consultations were entered into between the Board and Eirgrid under 02. VC0054 pursuant to the intention and requirement to lodge an entirely new 'application file' ;
- The Board has issued a notification to the effect that the proposed North South Interconnection development constitutes strategic infrastructure and thus requiring a new 'application file';
- Any such new 'application file' will be treated afresh and given a new application file reference number
- The new 'application file' will itself require new assessments and analysis including requirement for a new EIS/NIS,
- The new 'application file' will require new consultation and advertising processes to be entered into
- The new 'application file' will have completely new timelines, reporting arrangements and reporting requirements potentially including a new (not reopened) Oral Hearing and a separate decision made by the Board on the new 'application file'
- The latest project proposal overall remains generally similar to that previously withdrawn case particularly in regard to its broad routing, length and nature. However the new pre app process involved a re-evaluation by Eirgrid of the proposed development including consideration of the submissions made in association with the withdrawn application and further public consultation. The scheme was proposed by Eirgrid as "broadly similar" to the previous scheme but modified by new housing, omission of the substation and having regard to technical and environmental considerations. In addition changes have been made to approaches to preparation of environmental reports, the application file will propose fixed siting of structures and structures will now be removed from certain sensitive receptors such as hedgerows (see appendix 9 for public notice for case 02. VA0006 and draft public notice lodged pursuant to 02. VC0054).

3.6 In light of the above I must conclude that the withdrawal of the original application by Eirgrid was made "in the knowledge of the national rules applicable at the time of the submission of the file" and that it could have only been done in the full knowledge of the implications that a new application file requiring new examination would have been required. I do not consider that in the circumstances of the North South Interconnector Project and withdrawn application 02. VA0006 that this was done for the "...purposes of adding further information to the same file..." and that it therefore could be construed as merely a suspension

of that original first application. I attach as Appendix 10 to this report Eirgrid's letter of withdrawal of application 02. VA0006. Whilst still substantially the same project it cannot, in my opinion, be construed as the same 'application file'.

4.0 CONCLUSION/RECOMMENDATION

- 4.1** I recommend that the Board write to Eirgrid the project promoter of the North South Electricity Interconnector Project (Project of Common Interest reference 2.13.1 on the first Union List adopted on 14th October 2013) notifying Eirgrid that having regard to advice received from the EC DG – Energy it is of the opinion as Competent Authority within the Irish State pursuant to Article 8(1) of Regulation (EU) No 347/2013 that the proposed development does not fall within the transitional provisions set out in Article 19 of the Regulation and therefore that the permit granting and public participation requirements of Chapter III of that Regulation will apply to that part of the Project of Common Interest within the Irish State.
- 4.2** I would also recommend that Eirgrid be advised in writing that until such time as the Manual of Procedures pursuant to Article 9(1) of the Regulation has been published that the project remains not mature enough to enter into the permit granting process.

Philip Green
Assistant Director of Planning.

2nd May 2014